

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-00794-CKK**

NATURAL RESOURCES DEFENSE COUNCIL v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Assigned to: Judge Colleen Kollar-Kotelly

Cause: 05:552 Freedom of Information Act

Date Filed: 04/09/2018

Jury Demand: None

Nature of Suit: 895 Freedom of

Information Act

Jurisdiction: U.S. Government Defendant

Plaintiff

**NATURAL RESOURCES DEFENSE
COUNCIL**

represented by **Patrick D. Llewellyn**
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street, NW
Washington, DC 20009
(202) 588-7727
Fax: (202) 588-7795
Email: pllewellyn@citizen.org
ATTORNEY TO BE NOTICED

Michael T. Kirkpatrick
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street, NW
Washington, DC 20009
(202) 588-7728
Fax: (202) 588-7795
Email: mkirkpatrick@citizen.org
ATTORNEY TO BE NOTICED

V.

Defendant

**UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY**

represented by **Daniel Patrick Schaefer**
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA
555 Fourth Street, NW
Washington, DC 20530
(202) 252-2531
Fax: (202) 252-2599
Email: Daniel.Schaefer@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Alexander Daniel Shoaibi
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA
555 Fourth Street, NW
Washington, DC 20530
(202) 252-2511
Fax: (202) 252-2599
Email: alexander.d.shoaibi@usdoj.gov
TERMINATED: 07/17/2018

Date Filed	#	Docket Text
04/09/2018	<u>1</u>	COMPLAINT against UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Filing fee \$ 400 receipt number 0090-5410953) filed by NATURAL RESOURCES DEFENSE COUNCIL. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons to EPA, # <u>3</u> Summons to Attorney General, # <u>4</u> Summons to United States Attorney)(Kirkpatrick, Michael) (Attachment 1 replaced on 4/9/2018) (jd) (Entered: 04/09/2018)

		04/09/2018)
04/09/2018	<u>2</u>	Corporate Disclosure Statement by NATURAL RESOURCES DEFENSE COUNCIL. (Kirkpatrick, Michael) (Entered: 04/09/2018)
04/09/2018		Case Assigned to Judge Colleen Kollar-Kotelly. (jd) (Entered: 04/10/2018)
04/10/2018	<u>3</u>	SUMMONS (3) Issued Electronically as to UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, U.S. Attorney and U.S. Attorney General. (Attachment: # <u>1</u> Notice and Consent)(jd) (Entered: 04/10/2018)
04/10/2018	<u>4</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 4/10/2018. Answer due for ALL FEDERAL DEFENDANTS by 5/10/2018. (Kirkpatrick, Michael) (Entered: 04/10/2018)
04/10/2018	<u>5</u>	NOTICE of Appearance by Patrick D. Llewellyn on behalf of NATURAL RESOURCES DEFENSE COUNCIL (Llewellyn, Patrick) (Entered: 04/10/2018)
04/16/2018	<u>6</u>	ORDER ESTABLISHING PROCEDURES FOR CASES ASSIGNED TO JUDGE COLLEEN KOLLAR-KOTELLY. Signed by Judge Colleen Kollar-Kotelly on 04/16/18. (DM) (Entered: 04/16/2018)
04/25/2018	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 04/16/2018. (Kirkpatrick, Michael) (Entered: 04/25/2018)
04/25/2018	<u>8</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY served on 4/13/2018 (Kirkpatrick, Michael) (Entered: 04/25/2018)
05/09/2018	<u>9</u>	NOTICE of Appearance by Alexander Daniel Shoaibi on behalf of UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Shoaibi, Alexander) (Entered: 05/09/2018)
05/09/2018	<u>10</u>	ANSWER to Complaint by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.(Shoaibi, Alexander) (Entered: 05/09/2018)
05/21/2018	<u>11</u>	ORDER. The parties shall file the schedule not later than JUNE 20, 2018 . Signed by Judge Colleen Kollar-Kotelly on May 21, 2018. (lcckk1) (Entered: 05/21/2018)
06/19/2018	<u>12</u>	Joint STATUS REPORT <i>and Proposed Scheduling Order</i> by NATURAL RESOURCES DEFENSE COUNCIL. (Attachments: # <u>1</u> Text of Proposed Order proposed scheduling order)(Kirkpatrick, Michael) (Entered: 06/19/2018)
07/09/2018		MINUTE ORDER: The Court has received the parties' <u>12</u> Joint Status Report. As the parties have proposed, Defendant shall complete its search and release at least half of the responsive records to Plaintiff by AUGUST 15, 2018 . Defendant shall release the remainder of responsive records to Plaintiff by SEPTEMBER 14, 2018 . The parties shall file a further Joint Status Report by OCTOBER 15, 2018 , confirming the status of Defendant's production, identifying any remaining issues, and proposing a briefing schedule, if necessary. Signed by Judge Colleen Kollar-Kotelly on July 9, 2018. (lcckk1) (Entered: 07/09/2018)
07/09/2018		Set/Reset Deadlines: Joint Status Report due by 10/15/2018. (dot) (Entered: 07/11/2018)
07/17/2018	<u>13</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Daniel Patrick Schaefer on behalf of UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Substituting for attorney Alexander D. Shoaibi (Schaefer, Daniel) (Entered: 07/17/2018)
10/15/2018	<u>14</u>	Joint STATUS REPORT by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. (Attachments: # <u>1</u> Text of Proposed Order)(Schaefer, Daniel) (Entered: 10/15/2018)
10/16/2018		MINUTE ORDER: The Court has received the parties' <u>14</u> Joint Status Report. Defendant has made several releases of documents to Plaintiff but continues to verify that it has no additional responsive records. Plaintiff is reviewing documents produced thus far. As the parties have proposed, they shall file a further Joint Status Report by

		NOVEMBER 15, 2018 , confirming the status of Defendant's production, identifying any remaining issues, and proposing a briefing schedule, if necessary. Signed by Judge Colleen Kollar-Kotelly on October 16, 2018. (lcckk1) (Entered: 10/16/2018)
10/16/2018		Set/Reset Deadlines: Joint Status Report due by 11/15/2018, confirming the status of Defendant's production, identifying any remaining issues, and proposing a briefing schedule, if necessary. (dot) (Entered: 10/17/2018)
11/15/2018	<u>15</u>	Joint STATUS REPORT by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. (Attachments: # <u>1</u> Text of Proposed Order)(Schaefer, Daniel) (Entered: 11/15/2018)
11/28/2018		MINUTE ORDER: The Court has received the parties' <u>15</u> Joint Status Report. Defendant has issued a final response to Plaintiff's Freedom of Information Act request, and the parties have been collaborating since then to narrow, or resolve, remaining issues. The parties shall file a further Joint Status Report by no later than DECEMBER 18, 2018 , proposing a schedule for further proceedings, including a briefing schedule, if necessary. Signed by Judge Colleen Kollar-Kotelly on November 28, 2018. (lcckk1) (Entered: 11/28/2018)
11/28/2018		Set/Reset Deadlines: Joint Status Report due by 12/18/2018, proposing a schedule for further proceedings, including a briefing schedule, if necessary. (dot) (Entered: 11/29/2018)
12/18/2018	<u>16</u>	Joint STATUS REPORT by NATURAL RESOURCES DEFENSE COUNCIL. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit)(Kirkpatrick, Michael) (Entered: 12/18/2018)
12/21/2018		MINUTE ORDER: The Court has received the parties' <u>16</u> Joint Status Report, in which the parties make divergent proposals for the next steps in this litigation. Nevertheless, the Report, including its exhibits, suggests that the parties were working collaboratively until their latest impasse to narrow, or resolve, remaining issues. Because Defendant has offered to conduct a supplemental search to address at least part of Plaintiff's remaining issues, setting a briefing schedule at this time would not be the most efficient manner of resolving this case. Moreover, there is no indication in the Complaint that Plaintiff sought expedited review of its underlying Freedom of Information Act request. Accordingly, the Court shall decline to establish a schedule for the parties' cross-motions for summary judgment until after Defendant's supplemental searches and any further records processing is completed. By JANUARY 11, 2019 , Defendant shall conduct the supplemental search that Plaintiff requested, and which Defendant agreed to conduct. Upon completion of that supplemental search, the parties are directed to further confer on a processing schedule for any additional records that are located, and to propose a schedule for any further processing or, alternatively, a proposed briefing schedule, by JANUARY 22, 2019 . Signed by Judge Colleen Kollar-Kotelly on December 21, 2018. (lcckk1) (Entered: 12/21/2018)
01/09/2019	<u>17</u>	MOTION to Stay <i>in Light of Lapse in Appropriations</i> by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Schaefer, Daniel) (Entered: 01/09/2019)
01/09/2019	<u>18</u>	Memorandum in opposition to re <u>17</u> MOTION to Stay <i>in Light of Lapse in Appropriations</i> filed by NATURAL RESOURCES DEFENSE COUNCIL. (Attachments: # <u>1</u> Text of Proposed Order)(Kirkpatrick, Michael) (Entered: 01/09/2019)
01/10/2019		MINUTE ORDER: The Court has received Defendant's <u>17</u> Motion to Stay Proceedings in Light of Lapse in Appropriations, as well as Plaintiff's <u>18</u> Partial Opposition thereto. While Defendant requests, and Plaintiff consents to, a stay during the lapse of appropriations to the U.S. Department of Justice, Plaintiff disagrees with Defendant's proposal that deadlines be extended commensurate with the ultimate length of the stay. The Court agrees with Plaintiff that the length of the deadlines, once they are reestablished, should be consistent with the Court's Minute Order of December 21, 2018. Accordingly, in an exercise of the Court's discretion, the Court shall GRANT-in-PART and DENY-in-PART Defendant's <u>17</u> Motion. The Court shall STAY the deadline for the supplemental search otherwise required by January 11, 2019, as well as the subsequent deadline for a processing schedule or briefing

		schedule otherwise due by January 22, 2019. Upon restoration of the U.S. Department of Justice's funding and the resumption of its operations, Defendant shall have three weeks to perform the supplemental search that Plaintiff requested, and which Defendant agreed to conduct. Upon completion of that supplemental search, the parties are directed to further confer on a processing schedule for any additional records that are located, and to propose a schedule for any further processing or, alternatively, a proposed briefing schedule, within ten calendar days. The parties shall file a notice within five business days of the restoration of the U.S. Department of Justice's funding and the resumption of its operations. Signed by Judge Colleen Kollar-Kotelly on January 10, 2019. (lcckk1) (Entered: 01/10/2019)
01/28/2019	<u>19</u>	NOTICE of Restored Government Funding by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Schaefer, Daniel) (Entered: 01/28/2019)
01/29/2019		MINUTE ORDER: The Court has received Defendant's <u>19</u> Notice of Restored Government Funding. Accordingly, the Court hereby LIFTS the stay in this matter. Pursuant to the Court's Minute Order of January 10, 2019, Defendant shall complete the supplemental search that Plaintiff requested, and which Defendant agreed to conduct, by FEBRUARY 15, 2019 . Thereafter, the parties shall confer on a processing schedule for any additional records that are located, and shall propose a schedule for any further processing or, alternatively, a proposed briefing schedule, by FEBRUARY 25, 2019 . Signed by Judge Colleen Kollar-Kotelly on January 29, 2019. (lcckk1) (Entered: 01/29/2019)
01/29/2019		Set/Reset Deadlines: Proposed schedule due by 2/25/2019. (dot) (Entered: 01/29/2019)
02/25/2019	<u>20</u>	Joint STATUS REPORT by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. (Attachments: # <u>1</u> Text of Proposed Order)(Schaefer, Daniel) (Entered: 02/25/2019)
02/27/2019		MINUTE ORDER: The Court has received the parties' <u>20</u> Joint Status Report, which indicates that Defendant has completed the supplemental search discussed in the Court's Minute Order of December 21, 2018. The Court adopts the parties' proposal that Defendant complete its review of the additional records it located in its supplemental search and issue a final response to Plaintiff by MARCH 25, 2019 . The parties shall file a Joint Status Report by APRIL 15, 2019 , identifying any remaining issues and proposing a schedule for any further proceedings. Signed by Judge Colleen Kollar-Kotelly on February 27, 2019. (lcckk1) (Entered: 02/27/2019)
02/27/2019		Set/Reset Deadlines: Joint Status Report due by 4/15/2019, identifying any remaining issues and proposing a schedule for any further proceedings. (dot) (Entered: 02/28/2019)
04/15/2019	<u>21</u>	Joint STATUS REPORT by NATURAL RESOURCES DEFENSE COUNCIL. (Kirkpatrick, Michael) (Entered: 04/15/2019)
04/17/2019		MINUTE ORDER: The Court has received the parties' <u>21</u> Joint Status Report, which indicates that Defendant issued a final response as to the supplemental search discussed in the Court's Minute Order of December 21, 2018. The parties agree that the preparation of a draft <i>Vaughn</i> index and supporting declaration is the next step in this case, but the parties propose differing timelines for that production. Defendant appears to have good reason for its proposed timeline. Moreover, there is no indication that Plaintiff sought expedited review of the underlying FOIA request. Accordingly, the Court shall adopt Defendant's proposal. Defendant shall produce a draft <i>Vaughn</i> index and supporting declaration to Plaintiff addressing the two outstanding issues still in dispute in this case, <i>i.e.</i> , the basis for Defendant's withholdings under FOIA Exemption 5 and the sufficiency of its search, by no later than JUNE 7, 2019 . The parties shall submit a further Joint Status Report by no later than JUNE 21, 2019 , identifying any remaining issues and proposing a schedule for any further proceedings. Signed by Judge Colleen Kollar-Kotelly on April 17, 2019. (lcckk1) (Entered: 04/17/2019)
04/17/2019		Set/Reset Deadlines: Joint Status Report due by 6/21/2019. (dot) (Entered: 04/18/2019)